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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA,) 21CR135
)
vs.
MICHAEL REGAN, Buffalo, New York
August 26, 2021
Defendant. 2:00 p.m.

- - - - - X
ARRAIGNMENT/DETENTION HEARING
Transcribed from an electronic recording device

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. KENNETH SCHROEDER
UNITED STATES MAGISTRATE JUDGE

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1 USA VS. M. REGAN

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P R O C E E D I N G
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THE CLERK: This is United States versus

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Michael Regan, docket 21CR135. This is the date set for

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the arraignment. Assistant United States Attorney

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Caitlin Higgins appearing on behalf of the government;

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and Assistant Federal Public Defender Fonda Kubiak

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appearing with defendant.

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MAGISTRATE JUDGE SCHROEDER: Good morning.

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MS. KUBIAK: Good morning, your Honor.

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MS. HIGGINS: Good morning, Judge.

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MAGISTRATE JUDGE SCHROEDER: Ms. Kubiak,

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have you and Mr. Regan received a copy of the

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indictment?

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MS. KUBIAK: We have, your Honor. We

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acknowledge receipt, waive a further reading, enter a

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plea of not guilty at this time.

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MAGISTRATE JUDGE SCHROEDER: All right. Any

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change in facts and circumstances to warrant

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reconsideration of this Court's order of detention?

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MS. KUBIAK: Yes, Judge. We could would ask

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the Court to reconsider its order of detention. Mr.

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Regan is requesting a new detention hearing as his

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17:08:20 2 position is that there is information the Court did not
17:08:24 3 consider previously when we last argued bail.

17:08:30 4 MAGISTRATE JUDGE SCHROEDER: Was it
17:08:30 5 information that was learned or developed after?

17:08:35 6 MS. KUBIAK: His position, Judge, is that
17:08:37 7 it's based upon his review of the discovery that has
17:08:40 8 been provided thus far and that there is aspects with
17:08:47 9 respect to his defense that have not been presented.

17:08:57 10 MAGISTRATE JUDGE SCHROEDER: Well, the other
17:08:58 11 changed circumstance is we have a grand jury that has
17:09:01 12 now found probable cause for the charges to be made
17:09:04 13 against Mr. Regan.

17:09:07 14 Does the government have any input on this
17:09:09 15 issue of a detention hearing?

17:09:10 16 MS. HIGGINS: Judge, we would ask that he
17:09:12 17 remained detained. This is a presumption case pursuant
17:09:15 18 to 18 U.S.C. 3142(e)(3)(E). And based on the indictment
17:09:23 19 that charges additional crimes than what we charged in
17:09:26 20 the actual Complaint, we believe that the nature and
17:09:29 21 circumstances of the crimes charged are extremely
17:09:31 22 serious and weigh in favor of detention. We discussed
17:09:36 23 in the Complaint, but, Judge, not only does Mr. Regan
17:09:39 24 discuss having sex with the minor victim listed in the
17:09:44 25 Complaint or listed in the indictment, but in the

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17:09:45 2 Complaint, we also detailed that Mr. Regan discussed
17:09:48 3 with the minor victim how he had sex with other minors
17:09:52 4 and discussed wanting to have sex with other minors.
17:09:55 5 And when referring to sex or when referring to his
17:09:59 6 having sex with victim's minor friend last summer, Mr.
17:10:17 7 Regan wrote, "Not going to lie, getting sucked off and
17:10:22 8 eating her pussy and fucking her was fun. That was the
17:10:34 9 first time I ever did anything with someone that young."
17:10:38 10 He was discussing having relations with a minor previous
17:10:51 11 to the victim charged in the indictment, and he also
17:10:54 12 discusses wanting to engage in sex with other minors,
17:10:58 13 including his nieces. Judge, we find that he is a
17:11:02 14 danger to the community. We do not believe that any
17:11:04 15 conditions are going to mitigate, including ankle
17:11:08 16 bracelet or limiting his electronics. Quite frankly,
17:11:14 17 getting electronics in this day and age is so easy, it's
17:11:18 18 one click on Amazon, and he can have a new phone and his
17:11:22 19 wife can do that, anyone can do that. So we don't
17:11:25 20 believe there is any condition or combination of
17:11:27 21 conditions that is going to mitigate the risk.

17:11:30 22 And we also think that given the very
17:11:40 23 serious penalties he is facing, including the mandatory
17:11:43 24 minimum that he faces in this case makes him a flight
17:11:47 25 risk. I mean, he has a mandatory minimum of 15 years

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17:11:51 2 for production, 10 years for enticement, which also
17:11:55 3 carries with it a max penalty of life. These are
17:11:58 4 extremely serious charges, and that makes him a flight
17:12:01 5 risk in the government's position. We don't believe
17:12:04 6 there is a change in circumstances. The government has
17:12:07 7 not heard what the change of circumstances may be. If
17:12:10 8 the defense wants to make a proffer, that is fine. We
17:12:16 9 don't believe there is anything that has changed the
17:12:24 10 circumstances.

17:12:25 11 MAGISTRATE JUDGE SCHROEDER: That is the
17:12:33 12 primary issue. What are the changed facts and
17:12:36 13 circumstances?

17:12:36 14 MS. KUBIAK: Judge, Mr. Regan's position is
17:12:40 15 that either I didn't or wasn't in a position to fully
17:12:43 16 vet out the nature and circumstances of the offense as
17:12:46 17 well as his defenses and mitigating what Ms. Higgins
17:12:52 18 just set forth as the nature and circumstances
17:12:55 19 surrounding the indictment, so I now have had an
17:12:59 20 opportunity, as well as he, to review the discovery and
17:13:03 21 he is asking that I put a full-throttle defense before
17:13:09 22 the Court disputing all of the allegations that Ms.
17:13:13 23 Higgins just set forth, and I can do that now. That
17:13:15 24 would be also part of my proffer with respect to
17:13:21 25 release. His position is that he is being falsely

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17:13:24 2 accused, being railroaded, that he is being framed, that
17:13:30 3 he denies having any contact other than non-sexual
17:13:35 4 contact with this person on SnapChat. He never
17:13:41 5 discussed having relations with other individuals. We
17:13:44 6 have been informed that the other individual that Ms.
17:13:47 7 Higgins referred to had been interviewed and had denied
17:13:52 8 actually knowing the defendant and that that information
17:13:56 9 contained in the discovery was inaccurate. He is asking
17:14:15 10 me to take a position that the statement that he
17:14:17 11 provided to law enforcement was coerced, that it was not
17:14:21 12 knowing and voluntary, and that the information that was
17:14:25 13 provided to law enforcement during that statement was a
17:14:29 14 result of him being sleep deprived, disoriented, out in
17:14:34 15 the freezing cold in 30 degree weather for a lengthy
17:14:38 16 period of time, and then being coerced with respect to
17:14:41 17 the statements that were made. And he denies that the
17:14:44 18 information contained in the statements are true and
17:14:46 19 accurate. He also is indicating and has authorized me
17:14:55 20 to disclose to the Court that his position is that he
17:15:04 21 has an alibi defense with respect to the date in
17:15:06 22 question in the indictment with contact with the minor
17:15:10 23 victim. So, in light of those things, those are the
17:15:14 24 change in circumstances that he wants me to put forth
17:15:17 25 for this Court and argue for his release.

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17:15:20 2 His position is that he is not a flight
17:15:22 3 risk. He is a lifelong resident of Western New York.
17:15:26 4 He has two young children. His daughter is starting
17:15:29 5 kindergarten, and, therefore, he simply wants to be home
17:15:33 6 to be able to take care of his family. He is willing to
17:15:37 7 abide by any and all conditions, have an absolute
17:15:40 8 prohibition from any electronics in the household
17:15:44 9 whatsoever, be incarcerated in his own home, but for he
17:15:51 10 has a loss of use appointment on September 26th, 2021
17:15:57 11 where he is eligible to ask for Workers' Compensation as
17:16:05 12 a result of an injury that was sustained on April 7,
17:16:08 13 2020, so he would ask to be let out of the house solely
17:16:11 14 to be able to undertake that loss of use appointment.
17:16:16 15 His family is financially devastated and struggling,
17:16:21 16 and, as a result of his absence, the family's hardship
17:16:25 17 has been enormous. He has no prior criminal history
17:16:29 18 except for one DWI back in 2009, in which he was
17:16:36 19 successfully discharged and complied with the conditions
17:16:41 20 of probation. So, in light of his vehement denial of
17:16:47 21 the allegations in the indictment and his position is
17:16:49 22 that he has an alibi defense and that he is being
17:16:53 23 framed, I would ask the Court to release him on a
17:16:55 24 multitude of combination of conditions that can
17:16:59 25 ameliorate both risk of flight. He could post a

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monetary bond, potentially. There might be property that could be posted that would ensure his appearance and future court appearances. In fact, he has no history of failure to appear. He was a corrections officer for 14 years, Judge. He certainly knows the consequences should he fail to appear. And he certainly doesn't want to put his life, his family's life in further peril with respect to financial hardships if he were to flee. And with respect to danger to the community, I have in other cases had the Court impose a zero electronic prohibition that would ameliorate the concern that Ms. Higgins identified that Mr. Regan would get access to electronics and try and seek out or communicate with others.

MS. HIGGINS: May I respond?

MAGISTRATE JUDGE SCHROEDER: Certainly.

MS. HIGGINS: First of all, the fact that the defendant vehemently denies the allegations in the indictment does not merit -- does not qualify as a change in circumstances. In this case, the evidence is overwhelming. We have the text messages from this Textnow app, which, based on law enforcement work, was traced back to Mr. Regan. That hasn't changed since the Complaint. The Complaint forms the basis. The evidence

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identified in the Complaint forms the basis of the indictment. That hasn't changed in any way, shape or form. The text messages made clear that Mr. Regan was communicating with this minor victim, who was 13, explicitly requesting photographs and videos, which she did send, which the minor victim sent and the text messages did make clear that the two met up on August 28th, they met up, and then afterwards, exchanged text messages about the sexual contact. And, in fact, they continued to talk. So the evidence is clear.

In addition, with regard to his family and daughter entering kindergarten, there was a minor who was also identified in the indictment, who, for purposes of this hearing, will be identified as one of his children, on his phone, there was a picture of that. He produced a picture of child pornography of his infant daughter, at the time, she was 1 or 2. The government does not feel that releasing him back to his family in which he has already committed the crimes alleged in the indictment involving that infant is responsible or appropriate in this case. In addition, there is evidence that this defendant also threatened the other minor victim and told her that if she told anyone what happened between the two of them, that he would come to

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her house. The government believes that that alone demonstrates that he is a danger to the community, quite frankly, a danger to a witness in this case. He also requested that the minor victim delete messages so there was no evidence of this.

Ms. Kubiak is right, he is a corrections officer, and he knew exactly what to do, delete evidence and also threaten a witness who is 13 years old and wouldn't know any better to say, "Don't tell anyone or else I'm coming to your house."

The DWI conviction that this defendant had resulted in a manslaughter charge as well. So we do not feel that this defendant should be released. We feel he is a danger to the community. He has demonstrated as such in his conduct as charged in this indictment. And we also believe that, given the charges in this case, he may have showed up to prior court appearances, he has never been charged with anything like this where there is a 15 year mandatory minimum, a maximum of life in jail. These are very serious charges. So we do believe he is a flight risk and we believe he is a danger to the community. We don't believe releasing him back into the community and giving him a shot to communicate with the victim again in any way, shape or form is merited in

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17:21:58 2 this case.

17:21:59 3 MS. KUBIAK: Judge, Mr. Regan wants me to
17:22:01 4 inform the Court that he had 28,000 photographs on his
17:22:06 5 phone and the government is citing in Count 1 to one or
17:22:10 6 two images which Mr. Regan vehemently denies constitute
17:22:16 7 child pornography. And he is not a risk to the minor
17:22:21 8 victim identified as his infant daughter in Count 1.
17:22:24 9 And that the e-mail address that the Textnow app went
17:22:30 10 back to does not belong to him. And that someone has
17:22:33 11 hacked into his e-mail, and is engaging in the
17:22:37 12 communications with the minor victim identified in
17:22:42 13 Counts 2 through 4.

17:22:44 14 MS. HIGGINS: Again, Judge, in terms of the
17:22:45 15 communications and the e-mail hacking, that is not a
17:23:05 16 change in circumstance. The communications have been
17:23:07 17 listed in the Complaint from the outset of this case.
17:23:10 18 That is not a change in circumstance. Down the road,
17:23:13 19 maybe that is a defense that the defendant wants to
17:23:15 20 assert. That is not a change in circumstances in terms
17:23:17 21 of detention.

17:23:18 22 In addition, with respect to the image found
17:23:21 23 on the defendant's phone, the image was of the infant
17:23:25 24 girl laying down sleeping, she was partially covered
17:23:29 25 with her vagina exposed. That does constitute child

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17:23:36 2 pornography and this is not a picture that a parent
17:23:38 3 would typically take of an infant child for any other
17:23:42 4 purpose.

17:23:46 5 MS. KUBIAK: He does not want me to argue
17:23:48 6 anything else at this time, Judge.

17:23:49 7 MAGISTRATE JUDGE SCHROEDER: All right.
17:23:52 8 Once again, it is the government's position to continue
17:23:59 9 to request to have the defendant detained and the
17:24:02 10 defendant's position as to why that application should
17:24:03 11 be denied and the defendant should be granted a release
17:24:07 12 subject to terms and conditions the Court could impose.
17:24:12 13 I must consider all of the facts and circumstances and
17:24:16 14 information made known to the Court in its totality.
17:24:21 15 And in doing that, I, of course, am familiar with the
17:24:24 16 prior proceedings when the defendant appeared before me
17:24:28 17 under a Criminal Complaint, and I heard arguments as to
17:24:34 18 both the government's position as to why the defendant
17:24:38 19 should be detained and the defendant's arguments as to
17:24:42 20 why he should be released and issued my order of
17:24:46 21 detention based on what was known by the Court at that
17:24:50 22 time. The defendant has now asserted that there is a
17:24:53 23 change in the facts and circumstances in this case that
17:24:56 24 would warrant reconsideration of my order of detention.
17:25:01 25 I have basically allowed for a presentation to be made

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17:25:07 2 on behalf of the defendant for reconsideration of that
17:25:32 3 order of detention by accepting proffers both by the
17:25:38 4 government in further support of its motion to detain
17:25:40 5 the defendant, as well as proffers having been made on
17:25:44 6 behalf of the defendant by his counsel. I have also
17:25:49 7 taken into account the fact that a grand jury has now
17:25:52 8 returned an indictment, and, in doing so, as a matter of
17:25:56 9 law, the grand jury has found there is probable cause
17:26:00 10 for the charges set forth therein to be made against
17:26:03 11 this defendant. I have heard the representations put
17:26:06 12 forth on behalf of the defendant as to why these charges
17:26:10 13 should not be made against him or why they are not
17:26:15 14 valid. Basically, what the defendant is asserting in
17:26:18 15 that regard is his position of innocence. Those
17:26:24 16 assertions as made by the defendant, that he is being
17:26:26 17 framed, that there is a lack of proof or that there has
17:26:33 18 been hacking into his computer and all of the other
17:26:37 19 assertions that have been made on his behalf are all
17:26:40 20 matters that will be fully explored as part of an
17:26:44 21 alleged defense at trial. And in a detention hearing
17:26:48 22 such as this, it is not for this Court to be addressing
17:26:55 23 the issues of guilt or innocence. It's merely this
17:27:00 24 Court's function to determine whether, under the
17:27:02 25 totality of the circumstances the Court is aware of, the

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17:27:05 2 defendant should be released or should continue to be
17:27:10 3 detained.

17:27:11 4 The charges in the indictment themselves
17:27:13 5 bring into play the provisions contained in the Bail
17:27:17 6 Reform Act and that the presumption created by Congress
17:27:21 7 in that Act applies, that is, those charges are
17:27:27 8 sufficient to raise the presumption of dangerousness to
17:27:31 9 members of the community and the community. Admittedly,
17:27:35 10 the presumption in the Act is a rebuttable presumption.
17:27:40 11 However, what has been presented once again on behalf of
17:27:44 12 the defendant as it was in the original detention
17:27:52 13 hearing does not rise to the level for this Court to
17:27:56 14 consider presumption of dangerousness has been rebutted,
17:28:01 15 especially having the grand jury having heard evidence
17:28:06 16 presented to it has found probable cause for these
17:28:08 17 charges to be made. I find in that, also, in the
17:28:11 18 totality of the circumstances, that there is nothing of
17:28:14 19 substance that would constitute new or changed
17:28:18 20 circumstances that would warrant this Court setting
17:28:22 21 aside its original order of detention. And I find, once
17:28:27 22 again, that the defendant does constitute a danger to
17:28:31 23 the community or members of the community, and,
17:28:34 24 therefore, am continuing to order him to be detained.

17:28:40 25 Now, I want to put in place a scheduling

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17:28:44 2 order. How much time is the government going to need to
17:28:46 3 provide voluntary discovery material?

17:28:48 4 MS. HIGGINS: Judge, most, if not all, of
17:28:51 5 discovery has been turned over in this case already.
17:28:54 6 But the only thing that the defendant has not gotten, we
17:29:01 7 need the agent to make arrangements to bring certain
17:29:05 8 images to the jail for Mr. Regan. We would like 30 days
17:29:23 9 to arrange that. The agent is on vacation for the next
17:29:27 10 two weeks, as is defense counsel and myself. We would
17:29:32 11 ask for 30 days so that we could have time to arrange
17:29:54 12 with the jail time to bring the image to him. All of
17:29:56 13 the other discovery in the case has been turned over.

17:29:59 14 MAGISTRATE JUDGE SCHROEDER: Any problem
17:29:59 15 with the 30-day period since the defendant is now being
17:30:02 16 detained, Ms. Kubiak?

17:30:04 17 MS. KUBIAK: No, Judge. And that is
17:30:05 18 accurate, there is some logistical things to get access
17:30:09 19 to Mr. Regan with the images.

17:30:11 20 MAGISTRATE JUDGE SCHROEDER: All right. I'm
17:30:12 21 going to give the government, because there is a holiday
17:30:16 22 in that 30-day time period, namely Labor Day, September
17:30:21 23 6th, I'm going to give the government until September
17:30:24 24 30th, 2021 to complete that discovery process.

17:30:30 25 MS. HIGGINS: Thank you, Judge.

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17:30:41 2 MAGISTRATE JUDGE SCHROEDER: I am once again
17:30:44 3 admonishing the government as follows, as I previously
17:30:47 4 did when the defendant was before me in the initial
17:30:51 5 appearance on the Criminal Complaint, namely, as
17:30:56 6 required by the Due Process Protections Act, Public Law
17:30:56 7 116-182, 134 Statute 894 and Federal Rule of Criminal
17:31:38 8 Procedure 5(f)(1), this Court confirms the United
17:31:38 9 States' obligations to produce all exculpatory evidence
17:31:41 10 to the defendant pursuant to *Brady v. Maryland* 373 U.S.
17:31:44 11 83, 1963, and its progeny and orders it to do so. The
17:31:48 12 government must make these disclosures in sufficient
17:31:51 13 time that the defendant will have reasonable opportunity
17:31:54 14 to act upon the information efficaciously, citing *United*
17:31:59 15 *States v. Rodriguez*, 496 F. 3d 221, 226 a Second Circuit
17:32:05 16 Court of Appeals decision in 2007; *Leka v. Portuondo*,
17:32:10 17 257 F. 3d 89, 98, Second Circuit 2001; and *United States*
17:32:16 18 *v. Coppa*, 267 F. 3d 132, also Second Circuit Court of
17:32:20 19 Appeals decision in 2001. Failure to do so may result
17:32:25 20 in consequences, including, but not limited to,
17:32:28 21 exclusion of evidence, adverse jury instructions,
17:32:32 22 dismissal of charges, contempt proceedings or sanctions
17:32:36 23 by the Court.

17:32:38 24 Now, realizing, Ms. Kubiak, that you and the
17:32:40 25 defendant will have had an opportunity to review the

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17:32:47 2 additional materials that the government is going to
17:32:49 3 turn over in the forthcoming period between now and
17:32:52 4 September 30th, but knowing the nature of the charges in
17:32:55 5 this case, and I assume having knowledge of what is
17:33:00 6 going to be turned over, how much time do you think
17:33:03 7 you'll need to not only review that additional material,
17:33:06 8 but also to then prepare and file all pretrial motions
17:33:10 9 both dispositive and non-dispositive?

17:33:13 10 MS. KUBIAK: Judge, can we have 45 days.
17:33:16 11 There is a little bit of forensic evaluation that needs
17:33:19 12 to be done on the Textnow information, so that is
17:33:22 13 dependent on Mr. Grant's availability in our office. So
17:33:26 14 I think if you gave us 45 days, we can get that all
17:33:30 15 done.

17:33:31 16 MAGISTRATE JUDGE SCHROEDER: I have no
17:33:31 17 problem with that so long as the defendant agrees to
17:33:33 18 that, once again, realizing that he is detained. Does
17:33:37 19 the defendant agree to that application?

17:33:39 20 MS. KUBIAK: He does, Judge. I've explained
17:33:41 21 that to him, and I've explained Mr. Grant's availability
17:33:44 22 and the necessity for him to take a look at that
17:33:47 23 forensic information.

17:33:48 24 MAGISTRATE JUDGE SCHROEDER: All right. So
17:33:58 25 I will give the defendant until November the 12th, 2021

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17:34:08 2 to file all pretrial motions, both dispositive and
17:34:13 3 non-dispositive.

17:34:17 4 How much time is the government going to
17:34:19 5 need to respond to any motions filed.

17:34:21 6 MS. HIGGINS: Two weeks, please. Thank you,
17:34:23 7 Judge.

17:34:25 8 MAGISTRATE JUDGE SCHROEDER: All right. Any
17:34:26 9 responses to any motions are to be filed no later than
17:34:30 10 November 26th, 2021. Let me just check my calendar here
17:34:49 11 for an oral argument date. They are going to be
17:35:30 12 updating my PC, so what does December look like? How is
17:35:41 13 December 9th?

17:35:47 14 THE CLERK: Eleven o'clock.

17:35:48 15 MAGISTRATE JUDGE SCHROEDER: December 9th,
17:35:50 16 2021 at 11 o'clock.

17:35:51 17 MS. KUBIAK: That's fine, your Honor.

17:35:52 18 MS. HIGGINS: That is fine, your Honor.
17:35:54 19 Thanks.

17:35:54 20 MAGISTRATE JUDGE SCHROEDER: All right.
17:35:55 21 Oral argument on December 9th, 2021. In the meantime,
17:36:02 22 I'm directing the government to provide a written
17:36:05 23 pre-approved plea agreement to the defendant no later
17:36:12 24 than November 12th, 2021.

17:36:25 25 MS. HIGGINS: And, Judge, just for the

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17:36:27 2 record, the government had extended a plea to the
17:36:29 3 defendant, which he rejected.

17:36:31 4 MAGISTRATE JUDGE SCHROEDER: Was that plea
17:36:35 5 agreement pre-approved?

17:36:35 6 MS. HIGGINS: Yes, Judge.

17:36:36 7 MAGISTRATE JUDGE SCHROEDER: I'll still use
17:36:38 8 the November 12th date.

17:36:40 9 MS. HIGGINS: Sure, thank you.

17:36:43 10 MS. KUBIAK: That's correct. I provided
17:36:45 11 that plea agreement to Mr. Regan and reviewed it with
17:36:48 12 him and he has rejected that and has not indicated a
17:36:51 13 change in that position.

17:36:52 14 MAGISTRATE JUDGE SCHROEDER: Nevertheless,
17:36:53 15 should there be a change in circumstances, that November
17:36:57 16 12th date will continue to apply to the government and
17:36:59 17 I'll require the defendant to respond if there is any
17:37:03 18 change or reconsideration for the plea agreement to be
17:37:07 19 made by the defendant no later than November 23rd, 2021.

17:37:27 20 MS. HIGGINS: And, Judge, just, again, for
17:37:43 21 the record, we would likely give a different offer,
17:37:47 22 obviously, after rejecting the first and best offer, the
17:37:50 23 Government will not extend that same offer.

17:37:52 24 MAGISTRATE JUDGE SCHROEDER: I understand.

17:37:53 25 MS. HIGGINS: We'll keep that November 12th

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17:37:55 2 date. Thank you.

17:37:56 3 MAGISTRATE JUDGE SCHROEDER: Now, if no
17:37:57 4 motions are filed by the defendant on or before November
17:38:01 5 12th, 2021, the government shall file an application
17:38:06 6 with Judge Sinatra, the district judge to whom this case
17:38:10 7 has been assigned, for purposes of setting a trial date.

17:41:45 8 MS. KUBIAK: Thank you, Judge.

17:41:46 9 MAGISTRATE JUDGE SCHROEDER: In the
17:41:46 10 meantime, Ms. Kubiak, is it the position of the
17:41:48 11 defendant that the time between now and November 12th,
17:41:53 12 2021 will in fact be utilized in such a way so as to
17:41:57 13 operate and enure to his benefit, and, therefore, such
17:41:59 14 time should be excluded for purposes of the Speedy Trial
17:42:02 15 Act?

17:42:02 16 MS. KUBIAK: Yes, your Honor.

17:42:03 17 MAGISTRATE JUDGE SCHROEDER: And, Ms.
17:42:03 18 Higgins, on behalf the government, is it the
17:42:05 19 government's position that the time between now and
17:42:07 20 November 12th, 2021 will operate in the interest of
17:42:10 21 justice in this case, and, therefore, such time should
17:42:12 22 be excluded for purposes of the Speedy Trial Act?

17:42:15 23 MS. HIGGINS: Yes, your Honor.

17:42:15 24 MAGISTRATE JUDGE SCHROEDER: Based on the
17:42:16 25 representations made by counsel for the respective

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17:42:19 2 parties herein, I find that the time between now and
17:42:21 3 November 12th, 2021 will, in fact, be utilized in such a
17:42:26 4 way so as to operate and enure to the benefit of the
17:42:32 5 defendant as well as operate in the interest of justice
17:42:42 6 in this case in that such time is going to be utilized
17:42:45 7 to allow the government sufficient time within which to
17:42:48 8 complete the providing of voluntary discovery material
17:42:51 9 to the defendant, and, thereafter, give defense counsel
17:42:53 10 sufficient time within which to review such material as
17:42:56 11 provided. Further, such time will be utilized to allow
17:43:01 12 defense counsel sufficient time within which to prepare
17:43:05 13 in the representation of the defendant, so as to provide
17:43:07 14 the defendant with effective assistance of counsel, that
17:43:09 15 being his constitutional right, which right outweighs
17:43:13 16 the public's right or interest to a speedy trial or
17:43:16 17 disposition in this matter. For all of those reasons
17:43:19 18 then, the time is justifiably and validly excludable and
17:43:24 19 is hereby excluded pursuant to and in accordance with
17:43:28 20 the provisions contained in Title 18 of the U.S.C.
17:43:47 21 Section 3161(h)(7)(A) and 3161(h)(7)(B)(iv). Anything
17:43:51 22 further?

17:43:52 23 MS. HIGGINS: Nothing from the government,
17:43:54 24 Judge.

17:43:54 25 MS. KUBIAK: Not at this time, your Honor.

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17:43:55 2 Thank you very much.

17:43:56 3 MAGISTRATE JUDGE SCHROEDER: Thank you.

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5 CERTIFICATE OF REPORTER

6
7 I certify that the foregoing is a correct transcript
8 of the record to the best of my ability of proceedings
9 transcribed from the audio in the above-entitled matter.

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11 S/ Karen J. Clark, RPR

12 Official Court Reporter
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